

## **Part 528 – Agricultural Conservation Easement Program (ACEP)**

### **Subpart J – ACEP-ALE Easement Records, Monitoring, Enforcement**

#### **528.90 Maintaining Official Case Files and NEST Records**

A. The NRCS State office will update the NEST database with the following information within 10 days of receiving the recorded agricultural land easement deed:

- (1) Eligible entity
- (2) Name of the owners of the agricultural land easement acquired
- (3) County and Federal Information Processing Standard (FIPS) code where land is acquired
- (4) Acres acquired
- (5) Acres of prime, unique, and important farmland acquired
- (6) Acres of crop land acquired
- (7) Acres of forested land acquired
- (8) Acres of grazing lands acquired (includes range land and pasture land)
- (9) Acres of incidental land acquired
- (10) Revised total agricultural land easement value
- (11) Revised Federal share of easement payment
- (12) Revised eligible entity share of the easement payment
- (13) Revised landowner donation towards the agricultural land easement
- (14) Closing date of the parcel
- (15) Reimbursement date of payment, or, in the case of an advance, easement closing date

B. The following material related to acquiring an agricultural land easement must be maintained in a fireproof file at the NRCS State office:

- (1) A copy of the signed and recorded agricultural land easement deed
- (2) Subordination agreements, easement deeds, and other agreements entered into at the time of closing or after closing
- (3) Title reports on the protected property and final title insurance policy
- (4) Evidence of access documentation including documentation of determination of alternative legal access if applicable
- (5) Copy of the written pending offer (purchase and sales agreement) between the eligible entity and landowner
- (6) Maintain a copy of the Standard Form (SF) 270 and internal controls review document, including a copy of and documentation related to any approved eligible entity cash contribution waivers
- (7) A copy of the easement valuation documents, such as appraisal meeting USPAP requirements, UASFLA (Yellow Book) requirements, or both, or approval documents to use AWMA or other industry-approved methods, and associated valuation reports
- (8) Appraiser's certification statement
- (9) Technical review report
- (10) "Confirmation of Matching Funds" (Form NRCS-CPA-230 or successor form) as a signed statement verifying the appraised fair market value and purchase price of the agricultural land easement, as well as the landowner and eligible entity's contributions
- (11) Form NRCS-LTP-23, "Certificate of Use and Consent" (see Subpart U, "Exhibits," for Form NRCS-LTP-23)
- (12) Form NRCS-LTP-27, "Preliminary Certificate of Inspection and Possession" (see Subpart U, "Exhibits," for Form NRCS-LTP-27)

- (13) Completed environmental site assessment materials, including at a minimum, the hazardous materials field inspection checklist, hazardous materials landowner interview, and the environmental records search
  - (14) Copies of all approved waiver requests, such as the eligible entity cash contribution waiver; impervious surface waiver; any eligibility criteria waivers of the 50 percent prime, unique, statewide, or locally important soil criteria; or documentation of State or local criteria consistent with ACEP-ALE purposes
  - (15) Completed baseline documentation report
  - (16) The agricultural land easement plan (at time of closing) and subsequent amendments
  - (17) Annual monitoring reports submitted by the eligible entity
  - (18) Documents related to suspected, potential, or confirmed violations and their resolution
- C. The following material related to acquiring an agricultural land easement must be included in the ACEP-ALE case file (fireproof file is at the State's discretion) at the NRCS State office:
- (1) A copy of the original ACEP-ALE proposal or application
  - (2) Documentation regarding the ranking of the application and eligibility for funding, including as applicable
  - (3) Signed cooperative agreement relating to the agricultural land easement or other interest in land
  - (4) Verification of highly erodible land (HEL) and wetland conservation (WC) eligibility (Form AD-1026, "Self-Certification of Highly Erodible Land and Wetland Conservation Compliance")
  - (5) Verification of AGI eligibility (Form CCC-941, "Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information," or successor form)
  - (6) Completed Form NRCS-CPA-52, "Environmental Evaluation Worksheet"
- D. Six-part folders may be used to organize the documents associated with the entity cooperative agreement documents and the ACEP-ALE parcel documents. A separate file is recommended for the documents associated with the cooperative agreement.

## **528.91 Agricultural Land Easement Monitoring and Review**

- A. Pursuant to the terms of the cooperative agreement, the eligible entity, its successors, or its assigns has primary responsibility to monitor and enforce the terms of the agricultural land easement. The eligible entity will annually monitor compliance and provide NRCS with an annual monitoring report that documents that the grantee and grantor are in compliance with the agricultural land easement and associated agricultural land easement plan.
- B. The eligible entity will deliver a copy of the annual monitoring report based on the most recent annual monitoring event for each closed parcel to the NRCS State program manager. The monitoring report must address all ACEP-ALE questions on the NRCS template ACEP-ALE monitoring report in Title 440, Conservation Programs Manual (CPM), Part 527, Subpart P.
- C. Annual monitoring by the eligible entity will be conducted through onsite visits or through a review of the most recent and best publically available imagery that is no more than 2 years old and has not been used for a previously recorded monitoring event. During onsite monitoring, inspectors will meet with landowners, tenants, or renters if possible and invite the landowner to accompany them during the inspection. Photographs taken from designated photo points are desirable to document current conditions and any changes. If remote sensing discovers evidence of abnormalities, an onsite monitoring review must be done prior to delivering an annual monitoring report to NRCS.

D. The eligible entity will compare the conditions on the agricultural land easement to the conditions in the baseline documentation report. The eligible entity must prepare an updated impervious surface map if there are changes in the amount or location of impervious surface.

E. NRCS will conduct onsite monitoring if the eligible entity's annual monitoring report is insufficient or is not provided annually, or if NRCS has evidence of an unaddressed violation, as determined by the State Conservationist, or for older easements that require NRCS monitoring in the terms of the deed or cooperative agreement. Monitoring of agricultural land easements conducted by NRCS will follow the procedures outlined in Title 440, CPM, Part 527, Subpart P. Every effort should be made to coordinate any NRCS onsite monitoring reviews with the holder of the easement.

F. The conservation plan component of the agricultural land easement plan monitoring is the responsibility of NRCS. NRCS must monitor conservation plans in accordance with highly erodible land and wetland conservation compliance status review requirements. NRCS must conduct the review of conservation plan implementation in accordance with Title 180, National Food Security Act Manual (NFSAM).

G. NRCS will conduct contract status reviews on practices NRCS has a contract with the landowner to implement under other conservation programs, such as the EQIP, WHIP, AMA, CSP, CRP, or other programs.

## **528.92 Agricultural Land Easement Enforcement**

### **A. Background**

The eligible entity, or its successors or assigns, have primary responsibility for enforcement of the agricultural land easement and agricultural land easement plan. A violation is considered to have happened if any of the following occur:

- (i) The land is converted or developed to nonagricultural uses not consistent with the purposes and provisions of the agricultural land easement.
- (ii) Damage or destruction occurs to the resources identified for protection in the agricultural land easement, including, but not limited to, highly erodible land, prime farmland, grasslands of special environmental significance, or historical or archeological resources.
- (iii) The terms and conditions of the deed conveying the agricultural land easement or other interest are violated.
- (iv) Any required elements of the agricultural land easement plan are violated, including, but not limited to, the conservation plan on highly erodible lands is not implemented or maintained (see section 528.63).

### **B. Procedures for Suspected or Potential Violation**

- (1) If NRCS encounters a suspected or potential violation of the agricultural land easement deed or agricultural land easement plan, NRCS will notify the eligible entity. NRCS may contact the regional Office of General Counsel (OGC) for advice on documentation recommendations and eligible entity notification procedures. The eligible entity must investigate and provide NRCS with documentation of the outcome within the timeframe specified in the notification. The suspected violation and the eventual resolution of violations must be documented in the easement case file.
- (2) Any NRCS visits to the agricultural land easement area and observations must also be documented in the easement case file. The individual making the report must date and sign each entry on each item of documentation. Positive reports, showing no evidence of violation, are just as important as a negative report.

- (3) It is the eligible entity's responsibility to enforce the terms and conditions of the agricultural land easement and the agricultural land easement plan, however, if there is a violation of the conservation plan component of the agricultural land easement plan as it relates to the HEL/WC provisions of the Farm Bill, NRCS is responsible to enforce the HEL/WC compliance provisions in accordance with the procedures outlined in 180-NFSAM. A violation of the HEL/WC compliance provisions and policy in the NFSAM is considered a violation of the agricultural land easement only after the landowner has exhausted all applicable appeal and waiver rights.

For example, if a person is deemed to be in good faith, in accordance with NFSAM provisions, a person is not determined to be in violation of the HEL/WC provisions.

- (5) NRCS will notify the eligible entity of a potential HEL/WC violation following the initial contact made to a landowner.
- (6) NRCS will provide official notification of the conservation plan violation as an official easement violation to the eligible entity only after the landowner has exhausted all the appeal and waiver rights afforded to the landowner in the NFSAM and 440-CPM, Part 510, "Appeals." Figure 528-J1 outlines the initial steps NRCS should take in case of a potential violation discovered by NRCS.

Figure 528-J1

Step	Action
1	Record the potential violation.
2	Photograph any portion that may have relevance.
3	If the landowner is onsite with you document any discussions with the landowner. Discuss the potential violation if appropriate.
4	In the case of potential HEL/WC violations, notify the NRCS State Easement Manager who will notify the landowner and then the eligible entity. In the case of all other potential violations notify the eligible entity and the NRCS State Easement Manager.
5	If an HEL/WC violation, begin the procedures outlined in the NFSAM.
6	Notify the eligible entity of the outcome of any NFSAM proceedings.

#### C. Procedures for Confirmed Violation

- (1) When a violation is confirmed, the State Conservationist must notify EPD and the regional office of the Office of the General Counsel (OGC) for advice on documentation requirements and the contents of the eligible entity notification document to ensure that NRCS is not compromising its enforcement position.
- (2) After review by OGC, the State Conservationist must send written notice to the eligible entity by certified, return receipt mail. The returned receipt card must be kept in the official easement case file. It is the eligible entity's responsibility to contact the landowner and conduct enforcement proceedings.
- (3) Following receipt of notification by NRCS, the eligible entity must provide documentation to NRCS of their proceedings in accordance with the instructions provided in the notification letter.
- (4) If a violation is not addressed or corrected by the landowner and eligible entity, NRCS may take actions in accordance with the United States' Right of Enforcement included in the agricultural land easement deed. NRCS may also take actions with regard to the entity's status and ability to participate in the program, including but not limited to, decertification of a certified entity, determining an eligible entity no longer eligible, terminating the cooperative or grant agreement, or other steps.

D. Legal Action and Cost Recovery

- (1) In the event the United States exercises its right of enforcement, it is entitled to recover any and all administrative and legal costs associated with—
  - (i) Any enforcement or remedial action related to the enforcement of the easement from the landowner, including, but not limited to, attorneys' fees or expenses related to landowner's violations.
  - (ii) Any enforcement of the easement from the eligible entity, including, but not limited to, attorney's fees or expenses related to the eligible entity's violations or failure to enforce the easement.
- (2) Legal action may take either or both of two forms:
  - (i) Civil action to prevent further easement violation or to collect monetary damages
  - (ii) In especially egregious circumstances, criminal prosecution of the person who violates the easement, Federal law, or regulation.